

The Administrative Law Judge denied claimant's request for permanent partial disability benefits on the basis claimant did not sustain permanent injury or aggravation to his neck. The claimant requests the Appeals Board to review that finding. The sole issue on appeal is nature and extent of injury, if any.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be modified to award claimant permanent partial disability benefits for a ten percent (10%) functional impairment to the body.

On February 15, 1993, claimant fell from the hood of his truck, struck his head on the air cleaner assembly located on the side of the truck, and was knocked unconscious. Although the parties agree claimant sustained a compensable accident, the issue is whether claimant sustained permanent injury or aggravation to his neck as a result of the incident.

Shortly after the accident, claimant was taken to the hospital emergency room where he was diagnosed with a cerebral concussion and neck sprain, and referred to an occupational medical clinic for follow-up care. The first physician claimant saw at the clinic diagnosed cervical strain and osteoarthritis. The second physician claimant saw at the clinic, Dr. J. Patrick Walker, M.D., became his treating physician and also diagnosed claimant as having cervical strain and osteoarthritis in his neck. After having provided treatment, Dr. Walker believes claimant has not experienced permanent aggravation or impairment as a result of his work-related injury of February 1993, and any symptoms claimant may have are related to pre-existing osteoarthritis in the cervical spine.

At his attorney's request, claimant saw Dr. P. Brent Koprivica, M.D., for evaluation. Dr. Koprivica believes claimant has a cervical injury as a result of the fall and a twenty percent (20%) permanent partial impairment of function to the body as a whole as a result of the injury and ulnar palsy. If the ulnar palsy is excluded from the rating, the doctor believes claimant has a fifteen percent (15%) permanent partial impairment of function to the body as a whole.

Because of the difference in the opinions of Dr. Walker and Dr. Koprivica, the Administrative Law Judge ordered evaluation by an independent physician, neurologist Bernard M. Abrams, M.D. Dr. Abrams' writings indicate claimant's ulnar palsy condition is not related to his accident at work, and indicate claimant has a ten percent (10%) permanent partial impairment of function to the body as a result of the cervical spine. As part of his evaluation, Dr. Abrams obtained an MRI of claimant's cervical spine that indicated bulging discs at C5-6 and C6-7. Although respondent argued Dr. Abrams' report indicated the problems arising from the cervical spine were not industrially related, the Appeals Board finds that it is more probably true than not that the doctor was referring to the ulnar palsy problem rather than the symptomatology associated with the cervical spine.

Because he has returned to perform work in the open labor market at a comparable wage or higher, claimant does not contend he is entitled to benefits based upon work disability. Therefore, claimant's entitlement to permanent partial disability benefits is based upon his functional impairment rating which the Appeals Board finds to be ten percent (10%) as provided by Dr. Abrams. The Appeals Board finds the opinion of Dr. Abrams to be the most credible among those presented in this proceeding and most consistent with the evidence presented. In addition to conducting the most recent evaluation, Dr. Abrams had the benefit of the MRI evaluation while the other doctors did not.

Respondent has argued the claimant has failed to prove he has sustained injury to his neck because he complained of a neck injury arising from a truck wreck in November 1989. The Appeals Board must reject this argument because it is not supported by the evidence. Although it is true the medical records note neck complaints as a result of the 1989 wreck, claimant testified he does not recall receiving treatment for his neck after the wreck and that his neck was asymptomatic prior to his work-related accident of February 19, 1993. The medical records do not refute those statements.

Based upon the evidence contained within the record as a whole, claimant is entitled to benefits under the Kansas Workers Compensation Act based upon a ten percent (10%) functional impairment rating to the body.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Robert H. Foerschler, dated September 21, 1994, should be, and hereby is, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of claimant, Jerry D. Hall, and against the respondent, Dixon Tom-A-Toe, and its insurance carrier, Safeco Insurance Company, for an accidental injury occurring on February 15, 1993, and based upon an average weekly wage of \$583.41, for 415 weeks of permanent partial disability compensation at the rate of \$38.90 for a 10% permanent partial general body disability, making a total award of \$16,143.50.

As of January 20, 1995, there is due and owing claimant 100.71 weeks of permanent partial disability compensation at the rate of \$38.90 per week in the sum of \$3,917.62, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$12,225.88 is to be paid for 314.29 weeks at the rate of \$38.90 per week, until fully paid or further order of the Director.

Future medical treatment will be considered upon claimant's application to the Director for such benefits. Medical expense incurred to date for treatment of those injuries is ordered paid.

Unauthorized medical expense pursuant to K.S.A. 44-510(c) in the amount of \$350.00 are awarded to the claimant.

Pursuant to K.S.A. 44-536, the claimant's contract of employment with his counsel is hereby approved.

Costs of transcripts in the record are taxed against respondent and insurance company as follows:

Hostetler & Associates, Inc.	\$252.85
Gene Dolginoff & Associates, Ltd.	\$627.60

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Gary R. Terrill, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director